



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R01-OAR-2022-0961, FRL-10562-01-R1]

Approval and Promulgation of Air Quality Implementation Plan; Mohegan Tribe of Indians of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve amendments to the Mohegan Tribe of Indians of Connecticut (the Mohegan Tribe, Mohegans, or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering New Source Review (NSR) under the CAA on December 26, 2006. The proposed TIP includes permitting requirements for minor sources of air pollution not covered by the Tribe's existing federally approved TIP. The purpose of the proposed TIP is to enable the Tribe to attain and maintain the National Ambient Air Quality Standards (NAAQS) within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2022-0961 at <https://www.regulations.gov>, or via email to

Isenberg.Madeline@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited

or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Madeline Isenberg, Air Permits, Toxics and Indoor Programs Branch, EPA Region 1, 5 Post Office Square (Mail Code: 05-2), Boston, MA, 02109-3912, telephone number (617) 918-1271, email: Isenberg.Madeline@epa.gov

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. CAA Requirements and the Role of Indian Tribes

A. How did the 1990 CAA Amendments include Indian Tribes?

Under the 1990 amendments to the CAA, the EPA may approve eligible Tribes to administer certain provisions of the CAA. Pursuant to section 301(d)(2) of the CAA, EPA promulgated the Tribal Authority Rule (TAR) on February 12, 1998 (63 FR 7254). The TAR specifies the CAA provisions for which it is appropriate to treat Tribes in the same manner as states, the eligibility criteria the Tribes must meet if they choose to seek such treatment, and the procedure by which EPA reviews a Tribe's request for an eligibility determination.

As a general matter, EPA determined in the TAR that it is not appropriate to treat Tribes in the same manner as states for purposes of specific plan submittal and implementation deadlines for NAAQS-related requirements. *See* 40 CFR 49.4. Thus, Tribes are generally not subject to CAA provisions which specify a deadline by which something must be accomplished. For example, provisions mandating the submission of state implementation plans do not apply to the Tribes. Furthermore, under the TAR at 40 CFR 49.7(c), a Tribe may choose to implement reasonably severable portions of the various CAA programs, as long as it can demonstrate that its proposed air program is not integrally related to program elements that are not included in the plan submittal and is

consistent with applicable statutory and regulatory requirements. This modular approach is intended to give Tribes the flexibility to address their most pressing air resource issues and acknowledges that Tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, a Tribe's proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a state submittal. *See* 40 CFR 49.9(h). EPA expects Tribes to fully implement and enforce their approved programs and, as with states, EPA retains its discretionary authority to impose sanctions for failure to implement an air program.

Where the provisions of the act or implementing regulations governing the program for which the Tribe seeks approval require criminal enforcement authority, the Tribe may enter into a memorandum of agreement with the appropriate EPA Region to provide for criminal enforcement by EPA. *See* 40 CFR 49.7(a)(6) and 49.8.

B. What criteria must a Tribe demonstrate to be treated in the same manner as a state under the CAA?

Under section 301(d) of the Clean Air Act, 42 U.S.C. 7601, and the TAR at 40 CFR 49.6, EPA may treat a Tribe in the same manner as a state for purposes of administering certain CAA programs or grants if the Tribe demonstrates that (1) it is federally recognized; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the Tribe pertain to the management and protection of air resources within the Tribe's reservation or within non-reservation areas under the Tribe's jurisdiction; and (4) it can reasonably be expected to be capable of carrying out the functions for which it seeks approval.

C. What is an implementation plan for criteria air pollutants, and what must it contain?

Implementation plans are a set of programs and regulations submitted by states and, if they so choose, by Tribes, that outline a definite plan by which the state or Tribe intends

to help attain or maintain the NAAQS. NAAQS have been established for the following six pollutants: ozone; carbon monoxide; particulate matter; sulfur dioxide; lead; and nitrogen dioxide. The EPA calls these pollutants “criteria pollutants.” Once approved by EPA, implementation plans become enforceable as a matter of Federal law.

Implementation plans are governed by section 110 of the CAA, 42 U.S.C. 7410. Under sections 110(o) and 301(d) of the CAA and the TAR at 40 CFR 49.9(h), any TIP submitted to EPA shall be reviewed in accordance with the provisions for review of state implementation plans (SIPs) set forth in CAA section 110. Thus, the TIP must include not only the substantive rules by which the Tribe proposes to help achieve NAAQS, but also it must also provide assurances that the Tribe will have adequate personnel, funding, and authority to administer the plan, as required by CAA section 110(a)(2)(E), and requirements governing conflicts of interest, as required by CAA section 128. Under section 128, implementation plans must contain requirements that (1) any “board or body” that approves permits or enforcement orders have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or orders and (2) conflicts of interest are disclosed. EPA does not intend to read section 128 to limit a Tribe's flexibility in creating a regulatory infrastructure that ensures an adequate separation between the regulator and the regulated entity (59 FR 43956, 43964 (August 25, 1994)).

EPA will evaluate the elements submitted in each TIP on a case-by-case basis to ensure the selected program is reasonably severable under the CAA, and that the TIP has control measures that adequately address the specific types of pollution of concern on the reservation. Once EPA approves the TIP, its provisions are enforceable by the Tribe, by EPA, and by citizens. As with SIPs, EPA maintains an ongoing oversight role to ensure the approved TIP is adequately implemented and enforced and to provide technical and

policy assistance. An important aspect of EPA's oversight role is that EPA retains legal authority to bring an enforcement action against a source violating the approved TIP.

II. Background on the Mohegan Tribe and CAA Requirements

The Mohegan Tribe of Indians of Connecticut is an Indian Tribe federally recognized on March 7, 1994, by Congressional legislation (Pub. L. 103-377, October 19, 1994.). The Secretary of the Interior recognizes the “Mohegan Tribe of Connecticut” (86 FR 7554 January 29, 2021). On May 4, 2005, the Mohegan Tribe of Indians of Connecticut submitted a request that we find the Tribe eligible for TAS pursuant to §301(d)(2) of the CAA and Title 42, part 49 of the Code of Federal Regulations (CFR), for the purpose of implementing its CAA permitting program. The Mohegans also submitted for EPA approval its tribal implementation plan (“TIP”) on May 4, 2005.

The Tribe requested a TAS eligibility determination pursuant to the CAA and the TAR for the purpose of administering its TIP within reservation lands. The operative portion of the Mohegan TIP was the Tribe’s Area Wide NO_x Emission Limitation Regulation.

Based on the information submitted by the Tribe and after consideration of comments received in response to notice of the Tribe’s TAS request, EPA determined that the Mohegan Tribe met the TAS eligibility requirements for the purpose of administering and enforcing a TIP and similar air pollution control programs for minor sources under section 110 of the Act. *See* CAA 301 (d)(2) and 40 CFR 49.9(g).

The EPA drafted a decision document titled “Mohegan Tribe of Indians of Connecticut: Eligibility Determination Under 40 CFR part 49 for a Clean Air Act Tribal Implementation Plan” (TAS Decision Document, included in the docket of this rulemaking), which was dated December 20, 2006, and signed by Robert W. Varney, Regional Administrator, EPA Region 1 on December 26, 2006.

III. Background on Mohegan Tribe’s TIP

The Mohegan Tribe's TIP, submitted on May 4, 2005, and amended on August 22, 2007, consisted of a tribal ordinance, entitled "Area Wide NO_x Emissions Limitation Regulation," which established a limit on nitrogen oxide ("NO_x") emissions from stationary sources owned by the Mohegan Tribal Gaming Authority and located within the external boundaries of the Mohegan Reservation in Connecticut. The TIP was intended to function as a federally enforceable synthetic minor limit to keep the six boilers at the Mohegan Sun Casino from triggering major source NSR and Title V operating permit requirements for major sources. EPA granted approval of the Mohegan TIP in a final rule published on November 14, 2007 (72 FR 63988).

The Mohegan Environmental Protection Department (MEPD) assumes responsibility for administering the Mohegan TIP. The MEPD was established by Resolution of the Tribal Council on December 18, 2002, pursuant to the Council's constitutional authority to promote the health and general welfare of the Tribe and to establish a basic departmental structure for the executive branch. The MEPD is an executive department of the Office of the Chief of Staff to the Chairman of the Tribal Council and reports monthly to the Chief of Staff and quarterly to the Tribal Council. *See* Ordinance 2002-12 ("MEPD Ordinance") (Tribal Application, Exhibit 11) sections 2 and 5; Tribal Application, Exhibit 5 (chart depicting governmental structure).

The MEPD is "charged with the development, administration and enforcement of the Tribal Implementation Plan enacted pursuant to the Clean Air Act and any such other environmental program approved by the Tribal Council." *See* MEPD Ordinance, section 3. In particular, the MEPD Administrator has authority to develop and promulgate guidance, rules, and regulations to implement tribal environmental programs, with Tribal Council approval; to enforce environmental and natural resource rules and regulations; to promulgate reasonable and appropriate enforceable policies and procedures and a schedule of civil/criminal penalties to be assessed for violations of the MEPD's rules and

regulations, with Tribal Council approval; and, where the Tribe is precluded from asserting criminal enforcement authority, to execute agreed upon procedures concerning alleged criminal violations. *See* MEPD Ordinance section 4.

Furthermore, EPA Region 1 and the Mohegan Tribe of Indians of Connecticut have entered into a memorandum of agreement with each other outlining general terms for the cooperation of criminal enforcement matters as provided by section 113(c) of the CAA, 42 U.S. C. 7413(c). The agreement, entitled “Memorandum of Agreement Between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region 1 (a copy of which is provided in the docket of this action) provides procedures of communication as they relate to investigative leads of potential criminal enforcement matters concerning non-Native Americans and Native Americans.

The Tribe submitted a revision to its TIP on April 17, 2009. The revision included a monthly NOx emissions limitation for new emission units, namely uncontrolled diesel generators and controlled diesel generators. The revisions also vested the Administrator of the MEPD with enforcement authority for violations of the Mohegan TIP. Specifically, the revisions provided the Administrator with the authority to assess civil penalties of up to \$25,000 per violation per day, as well as to issue cease and desist orders for violations of the Mohegan TIP. The Mohegan Gaming Disputes Court formerly had the authority to perform these functions. Under the revisions, any entity or individual whose legal rights are affected by any decision of the Administrator regarding enforcement of the Mohegan TIP may appeal the decision to the Director of Regulation and Compliance and may subsequently appeal any decision of the Director of Regulation and Compliance to the Mohegan Tribal Court or Mohegan Gaming Disputes Court (“Mohegan Courts”), as appropriate. EPA approved the revision of the Mohegan TIP on September 28, 2009 (74 FR 49327).

IV. Overview of the Mohegan Tribe’s July 2022 TIP Revision

The Mohegans submitted a TIP revision to EPA on July 28, 2022, to establish and set forth the criteria and procedures that the MEPD Administrator (as defined in section 5-302-A) will use to administer a preconstruction permitting program for new and modified minor sources and minor modifications at stationary sources. The revised program also includes the addition of a source registration program for new and existing sources and provisions to obtain an area-wide limit for existing sources. The revisions also outline a process by which the Mohegan Tribe can establish permit by rules, and the Tribe has adopted one permit by rule into their body of regulations for gasoline dispensing facilities as part of these revisions. The Tribe's revisions include procedures for public notification and participation regarding permitting activities and provisions to allow for, in limited circumstances, administrative permit revisions. Elements of the Tribe's revised TIP are discussed in greater detail below.

NSR preconstruction permitting program.

The Tribe's NSR preconstruction permitting program sets applicability for emissions increases at new and modified existing sources through emissions thresholds at Table 1 to section 5-303-A. Sources with an emissions increase in excess of the thresholds are required to submit a permit application consistent with the procedures of Appendix A of Article XIII-A. The Tribe may issue a permit containing all required elements as described in Appendix B of Article XIII-A, including such items as general requirements, emission limits, monitoring, recordkeeping, and reporting requirements. Public notice of draft permit decisions made by the Tribe are to be noticed for public review in accordance with the Tribe's public participation requirements at section 5-309-A.

Source registration.

Source registration requirements are detailed in section 5-303-A(a)(1) and Appendix D. Due dates to register vary between existing true minor sources, existing synthetic minor source subject to the Mohegan's Area Wide Limitations for NO_x Emissions rule,

and new true minor sources. Content requirements are detailed for all registration information on forms provided by the MEPD Administrator. The procedure for estimating emissions outlines how registrations should include potential to emit or estimates of the allowable and actual emissions, in tons per year, of each regulated NSR pollutant for each emission unit at the source. After the source has been registered, additional reporting of relocation, change of ownership, and closure are required and detailed in Appendix D.

Area wide limits.

Procedures for establishing area-wide limits for existing sources (i.e., synthetic minor sources) are detailed in section 5-303-A. Substantive requirements in Appendix C of the Mohegan's minor NSR program contain provisions for the Tribe to establish permits for sources seeking area wide limits that contain adequate testing, monitoring, record-keeping, and reporting requirements to be used to demonstrate and assure compliance with proposed limitations.

Permit by rule provisions and adoption of gasoline dispense permit by rule.

Section 5-303-A(1) outlines the process by which the Tribe approves general permits/permits by rule for the purpose of complying with the preconstruction permitting requirements for specific source categories' emissions of regulated NSR pollutants under this program. This section includes a description of the Tribe's authority and procedure for adopting permit by rules, applicability, permit issuance, determination of permit by rule source categories, permit by rule content, and obtaining coverage under a permit by rule.

Included in the Tribe's program is a permit by rule for new or modified true minor source gasoline dispensing facilities, detailed in Appendix E. Information about this permit by rule includes applicability, eligibility, notification of coverage, termination, and definitions. Permit by rule terms and conditions include general provisions, which covers

construction and operation, locations, liability, severability, compliance, NAAQS/prevention of significant deterioration protection, unavailable defense, property rights, information requirements, inspection and entry, posting of coverage, duty to obtain a source-specific permit, and credible evidence. Emission limitations and standards, monitoring and testing requirements, and record keeping requirements are also stated in the permit by rule. Notification and reporting requirements include notifications on change in ownership or operator, notification of closure, annual reports, deviation reports, and performance test reports, all of which require a signature verifying truth, accuracy and completeness of the report.

Public notice and participation provisions.

Section 5-309-A. applies to the issuance of minor source permits, synthetic minor source permits, the initial issuance of permits by rule, and to coverage of a particular source under an established permit by rule. The MEPD Administrator shall provide public notification and participation of tentative determinations regarding permit applications, providing a copy to EPA Region 1 and to all other air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The Tribe's rule also establishes procedures for requesting a public hearing on tentative determinations and notice of final permit decisions.

Provisions for permit revisions.

The TIP contains provisions for a permit to be revised, reopened, revoked, and reissued, or terminated for cause. The filing of a request by the permittee for a revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance of an individual permit does not stay or affect any condition contained in a permit by rule. Administrative permit revisions are governed by the provisions stated in section 5-314-A.

Interaction with Previously Approved Mohegan TIP.

The previously approved Mohegan TIP established an enforceable cap of nitrogen oxide emissions from stationary sources owned by the Mohegan Tribal Gaming Authority and located within the external boundaries of the Mohegan Reservation. The Mohegan Tribe's July 2022 TIP revision addresses all regulated NSR pollutants for all tribal sources, except for NO_x at sources regulated under Article XIII of the existing TIP, by establishing a federally enforceable preconstruction permitting program within the exterior boundaries of the Tribe's reservation. This distinction in applicability is discussed in the introductory paragraph to Article XIII-A of the Tribe's July 2022 submittal.

V. EPA's Evaluation of the Mohegan Tribe's July 2022 TIP Revision

EPA has evaluated the Mohegan Tribe's revised TIP submittal; in the following sections we provide our assessment of the Tribe's program with respect to Clean Air Act requirements. The purpose of the Tribe's minor NSR permitting requirements is to establish a preconstruction permitting program, for new minor sources and minor modifications at stationary sources. The requirements that minor source programs must meet to be approved are outlined in 40 CFR 51.160 through 51.164. These regulations require states to develop "legally enforceable procedures" to enable a state "to determine whether the construction or modification of a [source] will result in (1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard." *See* 40 CFR 51.160(a). The program must identify the types and sizes of sources subject to review, and the state's plan must discuss the basis for determining which facilities will be subject to review. *See* 40 CFR 51.160(e).

Although the Act does not require Tribes to develop and seek EPA approval of NSR permit programs, where a Tribe decides to do so, EPA evaluates the program in accordance with applicable statutory and regulatory criteria in a manner similar to the way in which EPA would review a similar state submittal. *See* 40 CFR 49.9(h); 59 FR

43956 at 43965 (August 25, 1994) (proposed TAR preamble); 63 FR 7254 (February 12, 1998) (final TAR preamble).

For the reasons discussed below, we propose to approve the Mohegan minor NSR program in accordance with the TAR and the criteria for approval of minor NSR programs at 40 CFR 51.160 through 51.164. The Tribe's regulation, while structured differently, remains consistent with requirements in EPA's Federal Minor New Source Review Program in Indian Country. *See* 40 CFR 49.151 through 49.164. EPA's analysis of the various elements of the Mohegan's TIP Revision are described in more detail below.

NSR preconstruction permitting program.

Section 110(a)(2)(C) of the Act (42 U.S.C. 7410(a)(2)(C)) requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. In this TIP revision, the Mohegan Tribe is establishing a preconstruction permitting program for new minor sources and minor modifications at stationary sources. Parts C and D of the CAA, which pertain to prevention of significant deterioration (PSD) and nonattainment NSR, respectively, address the major NSR programs for major stationary sources, and the permitting program for "nonmajor" (or "minor") stationary sources is addressed by section 110(a)(2)(C) of the Act. We commonly refer to the latter program as the "minor NSR" program. A minor stationary source is a source whose "potential to emit", as defined in section 5-302-A(d), is lower than the major source thresholds, also defined within section 5-302-A(d) of the tribe's regulation, of 50 tons per year or more for NOx or VOC, and 100 tons per year or more for any other regulated NSR pollutant.

The Mohegan's NSR program applies to new true minor NSR sources and modifications at existing sources. Section 5-303-A(b)(1)(i)-(ii) of the Tribe's regulation

describes the way in which these sources would calculate whether an emissions increase at a new true minor source or a modification at existing source would need to obtain a permit prior to beginning construction of the new source or modification. If a permit is required, section 5-306-A of the tribe's regulation directs prospective permittees to follow provisions within Appendix A for specific requirements on what information must be in a permit application. Applications for permits must include facility information, a listing of each emissions unit, detailed unit specific information for all affected emissions units, a description and characterization of the total facility emissions, and if required by the MEPD Administrator an air quality impact analysis in accordance with 40 CFR part 51, appendix W.

Appendix B of the Mohegan TIP includes details on permit content, which includes authorities to impose emission limitations, monitoring requirements, reporting requirements and recordkeeping requirements.

EPA finds that the requirements of the Mohegan's minor NSR program follow the procedures to determine applicability, permit application requirements, and permit requirements in EPA's Federal Minor New Source Review Program in Indian Country at 40 CFR 49.153 through 49.155.

The Mohegan's minor NSR permitting requirements apply to stationary sources that are not major NSR sources and have the potential to emit the following regulated NSR pollutants at or above the following annual ton per year (tpy) thresholds:

- (a) Nitrogen oxides (NO_x), 5 tpy
- (b) Volatile Organic Compounds, 2 tpy
- (c) Carbon monoxide (CO), 10 tpy
- (d) Sulfur dioxide (SO₂), 10 tpy
- (e) Particulate Matter, 10 tpy
- (f) PM₁₀, 5 tpy
- (g) PM_{2.5}, 3 tpy
- (h) Lead, 0.1 tpy
- (i) Fluorides, 1 tpy
- (j) Sulfuric acid mist, 2 tpy

Source Registration.

The Tribe's requirements for existing true minor sources, existing synthetic minor sources for NO_x covered by Article XIII, and new true minor sources and modified sources provide for reasonable and enforceable measures for the Tribe to account for all applicable sources within their jurisdiction. Existing sources must register with the MEPD Administrator within 60 days of the enactment of the TIP, and new sources and modified sources must register with the MEPD Administrator as part of their permit application. EPA finds this source registration program to account for all potentially subject sources with clear guidance in regulation on how to register with the MEPD Administrator.

Area Wide Limits.

The Tribe has adopted synthetic minor source permitting provisions that, while structured differently, are substantively identical to EPA's rule at 40 CFR 49.158. The Mohegan's area-wide limit requirements apply to both NSR pollutants and hazardous air pollutants (HAPs) consistent with EPA's Tribal Minor NSR rule in Indian Country. EPA find the requirements within Appendix C of the Mohegan's minor NSR program to adequately establish the necessary testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with proposed limitation.

Permit by rule provisions and adoption of gasoline dispense PBR.

The Tribe has developed regulatory procedures to adopt permit by rules consistent with EPA's own procedures to adopt permit by rules within 40 CFR 49.156. The Tribe has also adopted a permit by rule for new or modified true minor source gasoline dispensing facilities which is identical to EPA's own air quality permit by rule for new or modified true minor source gasoline dispensing facilities in Indian country at 40 CFR 49.164.

Public notice and participation requirements.

The Tribe has adopted public notice and participation requirements that are consistent with EPA's rule at 40 CFR 49.157. The Mohegan Tribe's public participation requirements include at a minimum the following: availability, in the area affected by the air pollution source, of the draft permit and associated public record, for public inspection; public notice, describing the availability of the documents for review and the opportunity to comment; a comment period, no less than thirty (30) days commencing upon the date of publication; a thirty (30) day period for EPA to review commencing upon the date a copy of the required notice is provided to EPA; and if requested by a member of the public, a public hearing relating to tentative approval of the permit shall be held with appropriate notice provided.

B. What procedural requirements did the Mohegan Tribe satisfy?

Section 110(a) of the CAA requires that implementation plans be adopted by a state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

We find that the Mohegan's process for adopting and submitting the TIP satisfies the procedural requirements for adoption and submission of implementation plans under CAA section 110(a) and EPA's implementing regulations.

Specifically, the Mohegan's TIP submittal has fulfilled the following requirements: 1) a formal letter of submittal from the Tribe's Chairman requesting EPA approval of the plan in a letter dated July 28, 2022 from James Gessner, Jr, Chairman, to Patrick Bird, Air Permits, Toxics, and Indoor Programs Branch Manager, EPA New England Region 1 (Cover Letter), 2) evidence that the Tribe has adopted the plan in the Tribal code or body of regulations including the date of adoption or final issuance as well as the effective date

of the plan, 3) evidence that the Tribe has the necessary legal authority under tribal law to adopt and implement the plan, 4) a copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, 5) evidence that the Tribe followed all the procedural requirements of the Tribe's laws and constitution in conducting and completing the adoption/issuance of the plan (Exhibit A), 6) evidence that the public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice, 7) certification that public hearings were held in accordance with information provided in the public notice and the Tribe's laws and constitution, and 8) compilation of public comments and the Tribe's responses thereto.

VI. Proposed Action

EPA is proposing to approve the Mohegan Tribe of Indians of Connecticut's Tribal Implementation Plan under the Clean Air Act to regulate air pollution within the exterior boundaries of the Tribe's reservation. The proposed TIP includes minor NSR preconstruction permitting requirements and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds. Specifically, we are proposing to approve Resolution No. 2022-31 which incorporates Article XIII-A. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Mohegan Tribe's Resolution No. 2022-

31, which incorporates Article XIII-A and establishes a minor NSR preconstruction permitting program and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a TIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing TIP submissions, EPA's role is to approve tribal choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves tribal law as meeting Federal requirements and does not impose additional requirements beyond those imposed by tribal law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 9, 2023.

David Cash,
Regional Administrator,
EPA Region 1.